80-1046

Supreme Court, U. S.
FILED
DEC 24 1980
MICHAEL RODAK, JR., CLERK

No.

In the Supreme Court

OF THE

United States

October Term, 1980

Stuart W. Reichstein,

Petitioner,

vs.

Stephen W. Briggs,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the Superior Court, Maricopa County, State of Arizona

Stuart W. Reichstein,
Pro per,
P O Box 1272
Rockville, Maryland 20850
Tel: (301) 340-3144

QUESTION PRESENTED

Whether Superior Court, Maricopa, County, State of Arizona, purposefully discriminated against petitioner because he represented himself, pro per, and intentionally denied petitioner equal protection under the Fourteenth Amendment to the Federal Constitution, when the Court denied him his good cause, and reasonable, motion for continuance of one month, for a hearing; while subsequently on respondent's attorney's oral motion Court granted respondent six month continuance on another point.

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The Superior Court with clear intention discriminated against petitioner because he was pro per, thereby denied him his Constitutional rights to equal protection under the Fourteenth Amendment to the Constitution when Court denied his good cause one month motion for a hearing continuance., whilst respondent's attorney was promptly granted his oral motion for six month continuance on another point.	
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PETITION FOR A WRIT OF CERTIORARI
to the Superior Court, Maricopa County,
State of Arizona

Petitioner, Stuart W. Reichstein, respectfully prays that a writ of certiorari issue to review Superior Court's denial of petitioner's Motion for Continuance of Hearing, for one month, dated January 8, 1980, in Briggs v. Reichstein, No. C 382010.

OPINION BELOW

The Supreme Court of the State of Arizona Ordered: Petition for Review, Denied, on September 30, 1980, appears as Appendix A to this petition. The Arizona Court of Appeals, Division One, ordered appeal dismissed on 12th August 1980 appears as Appendix B to this petition. The Arizona Superior Court's January 11, 1980 order granting respondent Default Partial Summary Judgement appears as Appendix C to this petition., and the Court's denial of petitioner's Motion for Continuance, dated January 4, 1980, appears as Appendix D, dated January 8, 1980.

JURISDICTION

The Order denying review by the Arizona Supreme Court was entered September 30, 1980. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under U.S.C.A. Const. Amend. 14, and 42 U.S.C.A. Section 1983.

STATUTES INVOLVED

1. U.S.C.A. Const. Amend. 14, Section 1., guarantees equal protection, and due process.

2. 42 U.S.C.A. Section 1983 provides for Civil Action for Deprivation of Rights.

STATEMENT OF THE CASE

On 30 January 1979 respondent et uxor filed Complaint in Superior Court, Maricopa County, Arizona., served by U.S. Mail in Silver Spring, Maryland. Petitioner answered denying all allegations; also disjoined wife of respondent. Petitioner's 02 July 1979 Motion To Strike Complaint As A Sham - denied. On 4 December 1979 made motion for continuance of hearing on respondent's motion for partial summary judgement. On 3 January 1980, having received no word from Court, Petitioner telephoned Clerk of Superior Court - was informed that hearing scheduled for 11 January 1980. Petitioner submitted 4 January 1980 motion for continuance for one month, for good cause; denied 08 January 1980;Default Partial Summary Judgement Ordered 11 January 1980. Motion For Relief From Partial Default Summary Judgement denied on 31 March 1980. Appealed to Court of Appeals - denied 12th August, 1980., motion for rehearing denied 10th

September 1980. Petition For Review to the Supreme Court of Arizona, denied September 30, 1980.

REASONS FOR GRANTING THE WRIT

This Court in Snowden v. Hughes, 321 U.S. 1, 6-7, 64 S.Ct. 397 (1943) delineated equal protection standards under the Fourteenth Amendment of the Federal Constitution. Definitively, the Eighth Circuit U.S.C.A., in Shock v. Tester, 405 F.2d 852 (1969) set out the "unequal application to those who are entitled to be treated alike is not denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination." Petitioner was intentionally deprived of equal protection under the Fourteenth Amendment when the Superior Court denied petitioner's pro per status the same consideration generally accorded members of the Arizona State Bar. For this reason the order of the Superior Court denying relief from respondent's Default Partial Summary Judgement must be reversed.

ARGUMENT

The Superior Court discriminated when in first having denied petitioner's good cause, reasonable, motion for one month's Continuance, and subsequently denying petitioner's Motion For Relief From Default

Partial Summary Judgement. Petitioner's pro per status is in consonance with his Constitutional right. Instead of finding the Court's courteous acceptance of petitioner citizen pro per, in accordance with the Supreme Law of the Land, petitioner was made to become the object of ridicule, derision, humiliation, veiled threat, and overt and covert intentional discrimination in the Court. How? Overtly, by the Court Judge whose discriminatory Orders brought this issue to this Court. Covertly, though still discernable, by five different Judges having been assigned this case. One of the five being twice assigned; it is the latter Judge who issued instant Orders here noted., and, to whom petitioner's motion for Change of Judge, for bias and prejudice was directed., that motion was first granted, then rescinded.

Petitioner recounts the following intrinsic evidence to dispel either the implication, or speculation, of the intentional discrimination against himself as pro per, while undergirding the manifest presence of the ingredients which spelled-out denial of petitioner's equal protection, and due process, right. Petitioner is impelled to note his age, 63, with reasonable acumen that the Court's 27 March 1980 Hearing, appears as Appendices F and G to this petition, in chambers provided an

exhibition of xenophobia, coupled with the Judge's contumelious words directed to petitioner, pro per. Petitioner flew the 2000 mile night flight to be present for the following morning 8:45 Hearing. Petitioner, when in chambers, was first told by Judge: "I haven't read this stuff; I now have only 20 minutes for this." Petitioner requested a Court Reporter. Judge:'Denied."(shouted). Judge: "Did you go to Harvard?" Pro per: "No, Your Honor." Judge, to respondent's attorney: "which university did you attend?" Attorney: "ASU." This answer elicited Judge's great verbal approbation, with added acclaims about the attorney and ASU, for approximately 10 minutes, when Judge asked respondent's attorney, "Do you have any oral motions, if so let's have them." Attorney:'Why, yes, Your Honor, I want a continuance in this case for six months, onto the inactive calendar." Pro per: "I object, Your Honor, to this length of time." Judge: "Overruled." Judge: "Motion granted." Judge: - to pro per - "YOU don't send me copies of discovery documents, understand that?" then throwing the documents toward pro per. Judge: "what makes you think you're so smart coming into my Court in such a complex case -- you're going

to have to get a lawyer to get anywhere here." Pro per: "Your Honor, I chose pro per in accordance with my Constitutional right. I reason that I am duly and truly prepared to present my position in a good and acceptable manner in your Honor's Court." Judge: "How would you know that, anyway?" During this whole time, a stranger sat on a couch to the left side of the chambers, with whom the Judge spoke about unrelated subjects, with respondent's attorney joining their colloquy. Finally, after 18 minutes elapsed, the Judge said: "That's all. I'll look at this stuff, later." Pro per: "Your Honor, I am prepared to present my oral position in meritorious support of my motions." Judge: "That's all. Adjourned."

From in-chambers atmosphere charged with overt animus, absent decorum, toward pro per, it was scarcely anticipated that the Court would do anything but grant pro per's Relief From Default Partial Summary Judgement. Predictably, so confirmed, "Denied" on 31 March 1980., appears as Appendix E to this petition.

Conceded, the 27 March 1980 Hearing was successor to the Court's denial of 4 January 1980 Motion For Continuance; however, unalloyed logic

and fundamental common sense, imparts the ineluctable intentional discrimination linkage intrinsic and extrinsic, to the Court's denial of pro per's good cause 4 January 1980 Continuance Motion, and his 25 January 1980 Motion for Relief From Default Partial Summary Judgement, to the Court's unprecedented treatment in chambers on 27 March 1980, on which date the Court granted respondent's attorney's oral Motion For Six Month Continuance. The Court's act: granting six month continuance to respondent's attorney's oral motion, stated the Court's undisguised discrimination toward petitioner, which thereby gave Court's words and acts precise expression to it's clear intentional discrimination against petitioner as a pro per, which denied pro per his right to equal protection under the Fourteenth Amendment of the Federal Constitution. In Burt v. City of New York, 156 F.2d 791 (2d Cir. 1946) focus is on the parallel purposeful discrimination "practised upon, at least one, who has suffered what others in general have escaped.," this comports with Snowden to meet the test for a showing of an element of intentional or purposeful discrimination. The 4 January 1980 Motion for Continuance and Affidavit, appear as Appendices H and J to this petition; 15 January 1980 letter to Court and Physician's statement appear as Appendices K and L to this petition.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Dated: 22 December 1980.

Stuart W. Reichstein,
Petitioner, Pro per.

(Appendices Follow)

Appendices

APPENDIX A

MARYANN HOPKINS-YOUNG
CLERK

Supreme Court

STATE OF ARIZONA
201-WEST WING
CAPITOL BUILDING
Phoenix 85007

TELEPHONE
255-4536

October 1, 1980

STUART W. REICHSTEIN, Appellant, vs. STEPHEN W. BRIGGS, Appellee.	Supreme Court No. 15074-PR Court of Appeals No. 1 CA-CIV 5379 Maricopa County No. C-382010

The following action was taken by the Supreme Court of the State of Arizona on September 30, 1980 in regard to the above-entitled cause:

"ORDERED: Petition for Review - DENIED."

Record returned to the Court of Appeals, Division One, Phoenix, this 1st day of October, 1980.

MARYANN HOPKINS-YOUNG, Clerk
By Diana K. Bartley
Deputy Clerk

TO:
Mr. Stuart W. Reichstein, P. O. Box 383, Silver Spring, Maryland 20907
J. S. Emery, Esq., P. O. Box 20441, Phoenix, Arizona 85035
Hon. David J. Perry, Judge, Maricopa County Superior Court, 201 West Jefferson, Phoenix, Arizona 85003
Glen D. Clark, Clerk, Court of Appeals, Division One, West Wing, State Capitol Building, Phoenix, Arizona 85007

APPENDIX B

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA

FILED AUG 12 1980

GLEN D. CLARK, CLERK
By

IN THE
Court of Appeals
STATE OF ARIZONA
DIVISION ONE

STUART W. REICHSTEIN, Plaintiff-Appellant, v. STEPHEN W. BRIGGS, Defendant-Appellee.	1 CA-CIV 5379 DEPARTMENT B MARICOPA County Superior Court No. C-382010 O R D E R

Appellee's motion to dismiss this appeal was considered by the Court, Acting Presiding Judge Levi Ray Haire and Donald F. Froeb participating.

IT IS ORDERED that this appeal be, and it hereby is, dismissed.

DATED this 12th day of August, 1980.

LEVI RAY HAIRE
ACTING PRESIDING JUDGE

A true copy of the foregoing order was mailed this 12th day of August, 1980, to:

Mr. Stuart W. Reichstein
P. O. Box 383
Silver Spring, Maryland 20907
Appellant - In Propria Persona

Mr. J. S. Emery
P. O. Box 20441
Phoenix, Arizona 85036
Attorney for Defendant-Appellee

GLEN D. CLARK, Clerk
By
Deputy Clerk

APPENDIX C

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

18 — 1-11-80 — HON. DAVID J. PERRY — WILSON D. PALMER — Anne Seitz

C 382010

STEPHEN W. BRIGGS — Jack S. Emery

v

STUART W. REICHSTEIN

Stuart W. Reichstein
P.O. Box 383
Silver Spring, Md. 20907

Hearing on:
1. Plaintiff's Motion for Partial Summary Judgment.
2. Plaintiff's Motion for Order enjoining Defendant from proceeding further with the Michigan action.
3. Plaintiff's Motion to Compel Discovery.

Plaintiff is represented by Jack S. Emery; Defendant is not present or represented by counsel.

Court Reporter: None.

Oral argument is presented.

IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment is granted.

THE COURT FINDS that there is no just reason for delay and directs the immediate entry of judgment upon presentation of the formal, written Judgment by counsel.

The court reserves for future adjudication, allfissues pertaining to money heretofore paid by Plaintiff to Defendant.

The court declines to rule on Plaintiff's Motion for Order enjoining Defendant from proceeding further with the Michigan action and vacates the hearing set this date and Plaintiff is authorized to move for a hearing on the said motion at any time after this date.

IT IS ORDERED that Plaintiff's Motion to Compel Discovery is granted.

MAIL CONVERSION CENTER
Received: JAN 14 1980
Processed: JAN 14 1980

APPENDIX D

3

OFFICE DISTRIBUTION

APPEALS
BONDS PENDING
CHANGE OF VENUE
JURY FEES
REMANDS
SENTENCING

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

18 | 1-2-80 | HON. DAVID L. PERRY | WILSON D. PALMER, Clerk, Anna Seitz, Deputy

C 382010

STEPHEN W. BRIGGS

and

STUART W. REICHSTEIN

Jack S. Emery

Stuart W. Reichstein
14716 Waterway Dr.
Rockville, Md. 20853

Stuart W. Reichstein
~~P.O. Box 381~~
Silver Spring, Md. 20907

IT IS ORDERED that the Motion for Continuance dated Jan. 4, 1980 and received by the court on Jan. 7, 1980, is denied.

26 27 31 01

CLERK OF THE COURT
MAIL DISTRIBUTION CENTER
Received: JAN 9 1980
Processed: JAN 10 1980

APPENDIX E

OFFICE DISTRIBUTION
APPEALS
BONDS REFUND
FORFEITURE
CHANGE OF VENUE
JURY FEES
REMANDS
SENTENCING

IN THE SUPERIOR COURT
OF
MARICOPA COUNTY, STATE OF ARIZONA

18 DIV | 3-31-80 DATE | HON. DAVID J. PERRY JUDGE OF COMMISSIONER | WILSON D PALMER Clerk Anne Seitz Deputy

C 382010

STEPHEN W. BRIGGS et ux.

v

STUART W. REICHSTEIN

Stuart W. Reichstein
P.O. Box 383
Silver Spring, Md. 20907

Jack S. Emery

These matters having been under advisement,

IT IS ORDERED that:

1. The "Motion for Relief from Plaintiffs' Order to Compel Discovery" is denied.

To the extent that Defendant has not fully complied with Plaintiffs' requests for discovery, he shall do so on or before Apr. 18, 1980. In the event of Defendant's failure to comply with this order, the court will impose sanctions as provided in the Rules of Civil Procedure.

2. The "Motion for Relief from Plaintiffs' Partial Summary Default Judgement" is denied.

3. The motion denominated "Defendant's Motion for a Protective Order" is denied.

4. Counsel for Plaintiffs having waived his right to file a written Response to the motion denominated, "Defendant's Motion to Dismiss Instant Action under the Doctrine of Clean Hands", the said motion is denied.

5. The "Motion for Relief from Order Judgment in favor of Jack S. Emery, against Defendant" is denied.

CLERK OF THE COURT
MAIL DISTRIBUTION CENTER
Received: APR 1 1980
Processed: APR

APPENDIX F

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

18 | 2-26-80 | HON. DAVID J. PERRY | WILSON D PALMER
Anne Seitz

C 382010 | STEPHEN W. BRIGGS | Jack S. Emery

v

STUART W. REICHSTEIN

Stuart W. Reichstein
P.O. Box 383
Silver Springs Md. 20907

On stipulation,

IT IS ORDERED ~~xxxxxx~~ continuing time for oral argument on Defendant's Motion for Relief from Plaintiff's Partial Summary Default Judgment, Motion for Relief from Plaintiff's Order to Compel Discovery and setting Deft.'s Motion for Protective Order on Mar. 27, 1980 at 8:45 a.m. before Judge Perry, 8th Floor, 101 W. Jefferson, Phoenix, Arizona.

FURTHER ORDERED that:

Oral argument shall not exceed (5) minutes for each side. If extended oral agument is necessary, counsel must so advise the court no later than (4) court days prior to the date set for hearing so that oral argument can be rescheduled.

Any motion or stipulation for continuance must be filed with the court no later than (4) court days prior to the date set for hearing. After that date, no continuances will be granted except for extraordinary circumstances.

All memoranda and affidavits regarding the motion must be filed, and copies lodged with this division, no later than (4) court days prior to the date set for hearing.

Counsel are advised that if the answering memorandum is not timely filed in accordance with the Uniform Rules of Practice of the Superior Court, oral argument may be vacated and the motion will be ruled upon in accordance with Rule IV of the Uniform Rules of Practice.

CLERK OF THE COURT
MAIL DISTRIBUTION CENTER
FEB 27 1980
7

APPENDIX G

CERTIFICATE

It is hereby certified that the following is an extract from a Hearing before Hon. David J. Perry, Judge, Superior Court, Maricopa County, State Of Arizona, dated March 27, 1980, in reference to Civil Action No. 382010:-

"On stipulation of the parties,
IT IS ORDERED that this case is continued on the Inactive Calendar for dismissal on Sept. 26, 1980."

Stuart W. Reichstein

Subscribed and sworn to this 9 day of May, 1980, before me, a Notary Public.

NORMAN JESTER NOTARY PUBLIC MONTGOMERY COUNTY

7-1-82

APPENDIX H

SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STEPHEN W. BRIGGS,
Plaintiff,

v. No. C 382010

STUART W. REICHSTEIN, (Oral argument not requested)
Defendant.

MOTION FOR CONTINUANCE

I

In consonance with The State of Arizona Rules of Civil Procedure, defendant requests this Honorable Court for a continuance of the Order scheduling oral argument on plaintiff's three (03) Motions before this Honorable Court scheduled for January 11, 1980 at 11:00a.m.

II

Defendant further requests that this Honorable Court to grant an Order scheduling said oral argument hearing until either 7 February 1980, afternoon, or 8 February 1980, thereby coinciding with the deponent's presence for depositions in the city of Phoenix from 5 February 1980, throughout that week.

III

The cogent reasons for instant Motion are contained in the attendant defendant's affidavit.

Respectfully submitted,

Stuart W. Reichstein

4 January 1980

APPENDIX J

AFFIDAVIT

I. I, Stuart W. Reichstein, do hereby aver and depose that the unfortuitous development of poor health has curtailed and impaired deponent's work-load capabilities.

II. Coupled with the supra condition, there are two other key factors which preclude deponent from being able to be present, and prepared, for the oral argument hearing scheduled for January 11, 1980.

One: To combine, for conservation of deponent's energy, time, and expense, my travel to Phoenix to permit the taking of plaintiff Stephen W. Briggs' and Lawyer J. S. Emery's depositions, and the concluding of deponent's deposition.

Two: The manifest necessity to be able to include in deponent's answers to Lawyer Emery's said three (03) Motions, information and facts of enormous value that shall be elicted from the depositions of plaintiff and his lawyer, which, until this date has not been possible - mainly, and only, because of the deliberate vacilation, and procrastination, of plaintiff's lawyer J. S. Emery.

III. Accordingly, deponent has had to resort to Subpoenas Duces Tecum, issued by The Clerk of The Court to the two persons involved, evidenced by copies of the same, attendant herewith, which schedules the deposition of plaintiff Stephen W. Briggs on 5 February 1980. In this procedure, deponent's objective was two-fold — to avert any further Lawyer Emery delays; and, to provide deponent with the long sought information and facts from plaintiff Stephen W. Briggs and Lawyer J.S. Emery via their respective depositions, which shall also be incorporated in deponent's opposition to, and defense against, plaintiff lawyer Emery's three (03) said Motions.

IV. Therefore, in the furtherance of reasonable and fair convenience to deponent, and achieving the ends of justice, deponent seeks this Honorable Court's grant of the continuance requested in deponent's attendant said Motion.

Stuart W. Reichstein

Subscribed and sworn to before me this 5th day of January 1980,

a Notary Public.

7-1-82

Incls:

APPENDIX K

15 January 1980
P O Box 383
Silver Spring, Maryland 20907
(301) 340-3144

Honorable David J. Perry
Judge
Surperior Court
Maricopa County
State of Arizona
Phoenix, Arizona 85003

Re: C - 382010

Dear Judge Perry:

Acknowledgement is made of your Honor's Order of January 8, 1980 denying the Motion for Continuance in captioned numbered case.

The inclosed letter from my doctor dated January 11, 1980 was for another purpose, however, it is submitted for your Honor's consideration. I have been ill, and it was a supposition that the notation of illness in my 4 January 1980 Motion for Continuance wasn't appropriate, and I apologize for this conclusion. Assuredly, your Honor, had I realized that I couldn't physically make the trip and endure the stresses, Doctor Seligmann indicated that he would have written of my condition 3 weeks ago; I had been hoping that improvement would have come about sooner.

Being ill prevented my finishing the answer responses to Mr. Emery's Motions, and I would have planned to have been in your Honor's Court on Friday, 11 January 1980. It has been my planning to have always been punctual in my three separate appearances in the Superior Court of Maricopa County, before Judge Hertzberg and Judge Peterson.

It is unfortunate, from the point of protocol, that Mr. Emery, Mr. Briggs' lawyer, has proven other than cooperative, and undependable, otherwise this matter could have been carried through by mutual agreement in stipulation form.

I shall try to the best of the present condition of my health, to complete the responses to Mr. Emery's Motions, so that these can be mailed by Friday, 18 January 1980.

My apology to your Honor for my unnecessary remiss which was truly unintentional. And, I shall stand ready to do whatever your Honor shall further require of me.

Respectfully,

Stuart W. Reichstein

SWR:p
Incl.

APPENDIX L

ROBERT KRAMER, M.D.
RALPH E. SELIGMANN, M.D.
ROBERT KRAMER, M.D., P.A.
8630 FENTON ST. 6234
SILVER SPRING, MD. 20910
TELEPHONE 589-1210

[redacted]

January 11, 1980

Re: Stuart Reichstein

To whom it may concern:

The above is currently under my medical care. His condition does not permit any travel for at least the next two weeks.

Yours truly,

Ralph E. Seligmann, M.D.

RES/alm

[redacted]

[redacted]